CF0000060640

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CrA 2337/96 (2)

APPEAL OF PRISONER

No. 4668/54 Name सुधा राम Division Bench (Criminal)

Father's name ...निक्क राम साकिन-ग्राम- बलमेट, थाना- शिवरी नारायण

Residence ...बिलासपुर (म.प्र.) Age लगभग ...47 वर्ष

Sentenced to आजीवन कारावास एवं 5 वर्ष On ...30/9/96

Under section धारा 302, 396, 323 I.P.C. by श्री राज कुमार, शिवरीनारायण

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent ...11-12-96.....

4 Whether the prisoner wishes to be represented or not - Yes / No

No. 4668/54 Name सुधा राम आ. निक्क राम

Confined in ...केन्द्रीय... Jail ...रायपुर (म.प्र.)...

No. 214/6014/96 Dated ...11.12.1996

Forwarded to the CHIEF JUDICIAL MAGISTRATE श्री ...शिवरी नारायण... with a request that he will be pleased to forward together which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न :— सत्र प्र. क्र. 298/94 की प्रमाणित निर्णय प्रतिलिपि।

Superintendent
Superintendent, Central Jail, Raipur (M.P.)
11/12
Jail

Date of receipt in ..... office ...Date Amend 30/9/96 - 11/1

Date of receipt record to accompany the ..... OCT - 31 NOV - 30 Dec - 11

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199 ...7.2.

Forwarded to the .....

Date of receipt in Appellate Court ...23 Dec 96... 12 days

(P. T. O.)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(19)

मामला क्रमांक ....Cr.App..2337/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH -:

HON'BLE MR. L.C. BHADOO, Ag. C.J. &
HON'BLE MR. SUNIL KUMAR SINHA, J.

10.01.2007

Shri R.K.Jain, counsel for the appellant.

Shri U.N.S.Deo, Additional Public Prosecutor for the State.

Heard.

Per L.C. Bhadoo, Ag. C.J.

This appeal is directed against the judgment of conviction and order of sentence dated 30.9.1996, passed by the Additional Sessions Judge, Janjgir, District-Bilaspur (CG) in Sessions Trial No. 298/1994, whereby, learned Additional Sessions Judge, after holding the accused/appellant guilty for commission of the offence under Sections 302, 326 & 323 of I.P.C., sentenced him to undergo imprisonment for life, R.I. for 5 years & 6 months respectively. The sentences were directed to be run concurrently.

The case of the prosecution, in brief, is that the accused/appellant-Sudharam went to his in-laws house in village-Pachari 2-3 days prior to the date of incident. In the intervening night of 6th & 7th July, 1994, accused and his deceased mother-in-law – Budhawarin Bai were sleeping in the Veranda, all of a sudden at about 4.00 a.m., accused/ appellant attacked with a crowbar on the head of the deceased – Budhawarin Bai. On hearing screams of his mother PW-3 Mahadev woke up and went

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मामला क्रमांक Cr.App.2337/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश – 2–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

near the place of occurrence. When the accused was trying to make the second assault, Mahadev caught hold of crowbar and snatched the said crowbar from accused/appellant. On account of the assault made by accused, Budhawarin Bai succumbed to the injuries instantaneously. Mahadev reported the matter to the Police Station-Shivari Narayan on 6.6.1994 at about 6.00 am (Ex. P/7). After registering the crime for commission of offence under Section 302 of I.P.C., the Investigating Officer left for the scene of occurrence and after giving notice (Ex.P/1) to the witnesses, prepared inquest (Ex.P/2) on the body of Budhawarin Bai. Blood stained soil and plain soil (Ex.P/3) was taken into possession. Weapon of offence crowbar was taken into possession under Ex.P/4. A *Lungi* of accused stained with blood was also taken into possession (Ex.P-5). Body of deceased-Budhawarin Bai was sent for postmortem examination to Primary Health Centre, Shivari Narayan, where Dr. R.K.Pandey (PW-9) conducted the postmortem and prepared the postmortem report (Ex.P/15). He opined that cause of death was due to injury on the vital part of the brain and death was homicidal in nature. In the process Mahadev also sustained injuries when he was snatching crowbar from the accused and his injuries were examined by the Doctor (Ex.P/18) and injury report was prepared. Jagjivan son of Mahadev also sustained injuries. He was examined by Doctor and the Doctor prepared injury report (Ex.P/20). Shakuntala daughter of

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मामला क्रमांक Cr.App.2337/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Mahadev also sustained injuries, she was examined by Doctor and the Doctor prepared injury report (Ex.P-22).

After completion of the investigation, the charge sheet was filed in the Court of Judicial Magistrate First Class-Janjgir, who in turn committed the case to the Sessions Judge, Bilaspur from where, Additional Sessions Judge, Janjgir received the case on transfer.

The prosecution in order to establish the charge against the accused examined 12 witnesses. The statement of accused was recorded under Section 313 of Cr.P.C., in which, he denied the material appearing against him in the prosecution evidence and explained that he wanted to go to his village, but he was not allowed to go to the village and he has been falsely implicated in this crime. The prosecution witness-Mahadev (PW-3) and his family members assaulted the accused as a result of which, he sustained injuries on head and his head-bone was fractured and for those injuries, he was treated in the hospital of Shivari Narayan, Janjgir and Bilaspur.

Learned Additional Sessions Judge after hearing counsel for the parties and perusal of record convicted and sentenced the accused as aforementioned.

We have heard Shri R.K. Jain, learned counsel for the accused/appellant and Shri U.N.S.Deo, learned Additional Public Prosecutor for the State and perused the record.

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मामला क्रमांक ..... Cri.App.2337/96 ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned counsel for the accused/appellant has not disputed the homicidal death of Budhawarin Bai. Apart from that, from the ocular evidence of PW-3 Mahadev, PW-4 Jagjivan as also medical evidence of Dr.R.K.Pandey (PW-9), it is established that the death of Budhawarin Bai was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, PW-3 – Mahadev, an eye-witness and brother-in-law of accused, as per his evidence, accused being his brother-in-law was staying in the house and on the fateful night at about 4.00 am, accused/appellant attacked his mother with a crowbar and on hearing screams of his mother, he went to that place and saw that the accused was trying to make second assault, but he caught hold of crowbar and in the process of snatching crowbar, he sustained injuries. PW-4 Jagjivan, son of Mahadev, who was sleeping at the place of occurrence, has also corroborated the above evidence.

In the cross-examination of PW-3 Mahadev, it has come on record that after he reached to the scene of occurrence and caught hold of crowbar, accused was not able to assault his mother and further that after his reaching no assault was made by accused, but the fact remains that this witness heard screams of his mother and he went to the spot and saw that his mother was lying on the cot in an injured condition, accused was holding crowbar and was trying to make second assault, therefore, it is

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

established that on the evidence of PW-4 the accused was author of the assault or the injury inflicted on the body of Budhawarin Bai, as a result of which, she died spontaneously .

Learned counsel for the accused/appellant argued that in the process, the accused/appellant himself sustained injuries and in fact, he was assaulted by Mahadev and other family members and that fact has not been explained by the prosecution and he has been implicated in a false crime.

Having heard learned counsel for the parties, we have perused the evidence of PW-3 Mahadev. In para 8 of the cross-examination, this witness has categorically stated that the villagers came and accused was tied with the help of a rope on which accused himself was hitting his forehead on a stone, as a result of which, he sustained injuries. Therefore, how the accused sustained injuries, has already been explained by this witness that too in the cross-examination. Moreover, Mahadev's evidence has been corroborated by Jagjivan, who was also present there when the accused assaulted Budhawarin Bai with a crowbar.

Learned counsel for the accused/appellant submits that the trial Court has not given benefit of Section 428 of Cr.P.C. It is stated that the accused/appellant is in detention since 7.7.1994 till date, therefore, it is directed that accused is entitled for set off the detention period against sentence imposed upon him.

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मामला क्रमांक ....Cri.App.2337/96 **सन्** **200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश – 6 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In view of the above, we do not find any illegality or infirmity in the judgment of the trial Court.

In the result, the appeal being devoid of merits is liable to be dismissed and it is hereby dismissed.

Sd/-
Acting Chief Justice

Sd/-
SUNIL KUMAR SINHA
Judge

Sumita

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